

## Social Security Administration

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AUTHORITY: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

SOURCE: 71 FR 16446, Mar. 31, 2006, unless otherwise noted.

## Subpart A—Introduction, General Description, and Definitions

### § 405.1 Introduction.

(a) *General.* This part explains our procedures for adjudicating the disability portion of initial claims for entitlement to benefits based on disability under title II of the Social Security Act or for eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. All adjudicators derive their authority from the Commissioner and have the authority to find facts and, if appropriate, to conduct a fair and impartial hearing in accordance with section 205(b) of the Act.

(b) *Explanation of the administrative review process.* Generally, the administrative review process consists of several steps, which must be requested within certain time periods. The administrative review process steps are:

(1) *Initial determination.* When you claim disability benefits and a period of disability under title II of the Act or eligibility for disability or blindness payments under title XVI of the Act, we will make an initial determination on your claim. See §§ 404.902–.903 and 416.1402–.1403 of this chapter for a description of what is and what is not an initial determination. We use the procedures in part 404 subpart J of this chapter, part 416 subpart N of this chapter, or both, for your initial determination.

(2) *Reconsideration.* If you are dissatisfied with the initial determination, you may ask us to reconsider it. We use the procedures in part 404 subpart J of this chapter, part 416 subpart N of this chapter, or both, for your reconsideration determination. You must follow the procedure in § 404.909 or § 416.1409 of this chapter to request reconsideration.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsidered determination, you may request a hearing before an administrative law judge. The administrative law judge will use the procedures in subpart D of this part.

(4) *Appeals Council review.* If you or any other party to the hearing is dissatisfied with the administrative law

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judge's decision or with the administrative law judge's dismissal of a hearing request, you may request that the Appeals Council review that action. The Appeals Council also may initiate review on its own motion. The Appeals Council will use the procedures in subparts E through G of this part for its review.

(5) *Federal court review.* If you have pursued your claim through all levels of our administrative process and are dissatisfied with our final decision, you may request judicial review by filing an action in Federal district court.

(c) *Nature of the administrative review process—*(1) *Non-adversarial proceeding.* In making a determination or decision on your claim, we conduct the administrative review process in a non-adversarial manner.

(2) *Evidence considered and right to representation.* Subject to §§ 405.331 and 405.430, you may present and we will consider information in support of your claim. We also will consider any relevant information that we have in our records. To help you present your claim to us, you may have someone represent you, including an attorney.

(3) *Evidentiary standards applied.* When we make a determination or decision on your disability claim, we will apply a preponderance of the evidence standard, except that the Appeals Council will review findings of fact under the substantial evidence standard.

(4) *Clarity of determination or decision.* When we adjudicate your claim, the notice of our determination or decision will explain in clear and understandable language the specific reasons for allowing or denying your claim.

(5) *Consequences of failing to timely follow this administrative appeals process.* If you do not seek timely review at the next step required by these procedures, you will lose your right to further administrative review and your right to judicial review, unless you can show good cause under § 405.20 for your failure to request timely review.

(d) *Expedited appeals process.* You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is un-

constitutional. This process permits you to seek our agreement to allow you to go directly to a Federal district court so that the constitutional issue(s) may be resolved.

[71 FR 16446, Mar. 31, 2006, as amended at 76 FR 24808, May 3, 2011]

### § 405.5 Definitions.

As used in this part:

*Act* means the Social Security Act, as amended.

*Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105 who is employed by the Social Security Administration.

*Commissioner* means the Commissioner of Social Security, or his or her designee.

*Date you receive notice* means five days after the date on the notice, unless you show us that you did not receive it within the five-day period.

*Day* means calendar day, unless otherwise indicated.

*Decision* means the decision made by an administrative law judge, attorney advisor, or the Appeals Council.

*Disability claim or claim* means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this part, the terms “disability claim” or “claim” do not include a continuing disability review or age-18 redetermination.

*Document* includes books, records, correspondence, papers, as well as forms of electronic media such as video tapes, CDs, and DVDs.

*Evidence* means evidence as defined under §§ 404.1512 and 416.912 of this chapter.

*Preponderance of the evidence* means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

*Substantial evidence* means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

*Vacate* means to set aside a previous action.